



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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Denver, CO 80202-1129
Phone 800-227-8917
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FEB 24 2017

Ref: 8ENF-W-NP

CERTIFIED MAIL #
RETURN RECEIPT REQUESTED

Mr. Rick Willard
CDOT Hydrologic Resource Unit Lead
4201 East Arkansas Avenue, Suite 262
Denver, Colorado 80222

Re: Clean Water Act Letter of Potential Violation

Dear Mr. Willard:

This letter concerns Colorado Pollutant Discharge Elimination System Permit No. C0S-000005 (the Permit), which the Colorado Department of Public Health and Environment issued to the Colorado Department of Transportation (CDOT) for discharges from CDOT's Municipal Separate Storm Sewer System (MS4) located throughout Colorado. On March 30 through April 2, 2015, the EPA and CDPHE conducted an inspection of CDOT's MS4 to assess compliance with the Permit. As you are aware, the inspection report raised concerns such as the following:

- Apparent lack of adequate resources to implement CDOT's MS4 program.
- Failure to train staff.
- Failure to have procedures that meet permit requirements.
- Failure to ensure contractors comply with the state construction general storm water discharge permit.
- Failure to enforce storm water requirements against contractors.
- Failure to have a complete inventory of post-construction water quality control features, and
- Failure to maintain post-construction water quality control features.

Copies of the inspection report and related documents were provided to CDOT on September 30, 2015. On December 11, 2015, CDOT provided a response to the EPA on the corrective actions taken at its MS4 to address the inspection report findings. On April 11, 2016 and September 28, 2016, CDOT provided the EPA with updates of the corrective actions taken to further address the inspection report findings.

The EPA invites CDOT to discuss this matter further prior to EPA making a final determination regarding CDOT's permit compliance. If the EPA determines that CDOT is not responsible for any violation, no further action will be required. However, if the EPA makes a final determination that CDOT is liable for violating the Permit or any other requirement of the Clean Water Act or the EPA's

regulations, the EPA, using its authority under the CWA, 33 U.S.C. § 1319, may issue a complaint proposing the CDOT be assessed an administrative penalty and/or issue an administrative order requiring CDOT to comply with the Permit. Before issuing any such complaint and/or order, the EPA will be open to discussing the terms of compliance and/or penalties with CDOT in order to reach a mutually acceptable agreement. A compliance agreement would result in an administrative order on consent (AOC). An agreement on a penalty assessment would result in a combined complaint and consent agreement (CCCA). The AOC and/or CCCA would provide that CDOT waives its right to contest the AOC and/or CCCA and that CDOT acknowledges that the EPA has authority to issue the AOC or CCCA. CDOT need not admit liability in the AOC or CCCA.

Alternatively, CDOT may decline to enter into early discussions with the EPA. If the EPA makes a finding of liability and unilaterally issues a compliance order and/or penalty complaint to CDOT, CDOT may contest either or both actions through a formal adjudicative process.

If you are interested in entering into early discussions with the EPA, or if you have questions regarding this letter of potential violation, please contact Emilio Llamozas of EPA Region 8's Technical Enforcement Program, at (303) 312-6407, or llamozas.emilio@epa.gov, within 30 days of receipt of this letter. Any questions from counsel for CDOT should be directed to EPA enforcement counsel, Peggy Livingston, at (303) 312-6858 or livingston.peggy@epa.gov.

We appreciate your prompt attention to this matter.

Sincerely,



Stephanie DeJong, Unit Chief
NPDES Enforcement Program
Office of Enforcement, Compliance, and
Environmental Justice

Sincerely,



James H. Eppers, Supervisory Attorney
Regulatory Enforcement Unit
Legal Enforcement Program
Office of Enforcement, Compliance, and
Environmental Justice

cc: Nathan Moore, (email) CDPHE